

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOLENE RITTERBUSH,

Plaintiff,

v.

STATE OF NEBRASKA, through the State
of Nebraska Judicial Branch, Office of
Probation Administration;

Defendant.

4:15CV3067

ORDER

This matter is before the court on defendant the State of Nebraska's ("the State") motion in limine to exclude Plaintiff's Exhibit Nos. 4 and 5, [Filing No. 40](#), and the State's motion to dismiss for lack of subject matter jurisdiction, [Filing No. 57](#). After taking into consideration all evidence and arguments, the State's motions are both denied.

First, the State argues Plaintiff's Exhibit Nos. 4 and 5 should be excluded because they are offered only for the purpose of legal instruction and because they are hearsay. The exhibits are fact-sheets produced by the U.S. Department of Labor explaining the law regarding what types of employees are entitled to overtime compensation. The court is of the opinion that these exhibits might, depending on how they are presented, be admissible for the limited purpose of proving a willful violation of the Fair Labor Standards Act by the State. Therefore, the court denies the State's motion in limine, and reserves final judgment on the admissibility of these exhibits until such time as they are presented at trial.

Second, the State asserted that this court lacked subject matter jurisdiction in this case because there was no party plaintiff in this suit because the plaintiff had not filed written notice of consent under [29 U.S.C. § 216\(b\)](#). The plaintiff has since filed § 216(b)

consent, without admitting that such consent was required. In light of the new filing, the State concedes that this court has subject matter jurisdiction. Therefore, the motion to dismiss is denied.

IT IS ORDERED that:

1. The defendant's motion in limine to exclude Plaintiff's Exhibit Nos. 4 and 5, [Filing No. 40](#), is denied.
2. The defendant's motion to dismiss for lack of subject matter jurisdiction, [Filing No. 57](#), is denied.

Dated this 10th day of November, 2016.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge